MARITAL DISCORD

Recapturing Human Dignity Through the Higher Objectives of Islamic Law

ABDULHAMID A. ABUSULAYMAN

NEW REVISED EDITION

FOREWORD TO 2ND EDITION

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (IIIT) has great pleasure in presenting this new edition of Occasional Paper 11 entitled, *Marital Discord: Recapturing Human Dignity Through the Higher Objectives of Islamic Law* by Dr. AbdulHamid A. AbuSulayman. Originally published in 2003, the Paper has been carefully revised and the translation improved to remove any ambiguity, and enhance clarity of meaning.

The author examines the delicate issue of marital discord and the "chastisement" (*darb*) of wives with a deep appreciation for the position and status of women. He further challenges the current and historical misconceptions of a debate on *iḍribuhunna* that has largely stifled any meaningful interpretation of verse 4:34 of the Qur'an, other than the husband's right to use physical discipline against a "disobedient" wife.

Using principles enshrined in the philosophy of *maqāṣid al-sharī'ah* (the higher intents and purposes of Islamic Law) the author theorizes on the nuances of this complex and sensitive subject, deriving a conclusion based on an interpretation of the verb *ḍaraba*, which focuses on realizing human well-being, dignity and respect. The author's evidence is the various uses of the same verb in several other contexts in the Qur'an itself, the actions of the Prophet Muhammad (ṢAAS)* and the spirit of the Qur'an's message.

It is important that the verb *ḍaraba* is studied. The nature of the Arabic language, as apparent in any Arabic-Arabic dictionary, is that every verb bears a large variety of meaning, related in one way

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* (ṢAAS) – *Ṣallā Allāhu 'alayhi wa sallam*. May the peace and blessings of God be upon him. Said whenever the name of Prophet Muhammad is mentioned.

or another to the root of the verb. So for instance the verb *ḍaraba*, upon which hinges most understanding of conduct, bears a variety of meanings as the author successfully demonstrates, which vary considerably depending on the situation and content of the verses in which it is mentioned. Given Islam's higher purposes and principles (*maqāṣid*) of compassion and love within marriage, the author explains that using the root *ḍa ra ba* of the verb to mean hitting, smacking, or any form of "abuse," is to take the verse out of its purpose and to misapply it. Neither physical abuse, nor foul language, nor verbal abuse, are accepted practices in Islam.

Constantly maintaining that domestic violence and general male oppression have nothing to do with the teachings of the Qur'an, or the actions of the Prophet Muhammad, Dr. AbuSulayman points to the safeguarding of the family unit and human relations as of prime importance, especially when children are involved. The negative impact of any form of violence between spouses on children is now widely documented and lends support to the argument that action should focus on realizing the true Islamic spirit of human dignity for all members of a family. This is emphasized in many verses of the Qur'an, and as the author discusses, in the actions of the Prophet himself, specifically in this case with his own relations to his wives.

Incidentally, verse 4:34 puts the onus on man to maintain harmony in marriage and solve any marital discord. This is perhaps because the opening lines address men as *qawwāmūn*. This word, which the author discusses, from the root *qa wa ma*, has been translated in various ways into English, from "care," "responsibility and support," to "protection," "authority," and "being in-charge." Given the context in which men are therefore placed in the verse, it makes sense that they are recommended to maintain harmony. However, this is not to say that women are the only source of problems within marriage or that men are the only ones to solve them. In fact verse 4:34 should be read in conjunction with verse 4:128, in the same chapter, which refers to how to deal with a husband's ill-treatment.

> And if a woman has reason to fear ill-treatment from her husband, or that he might turn away from her, it shall not be wrong for the two to set things peacefully to rights between themselves: for peace is best, and selfishness is ever-present in human souls. But if you do good and are conscious of Him – behold, God is indeed aware of all that you do. (4:128)

That aside, the verb *nushūz*, which exists in both verses (4:34; 4:128) and means an act of ill-will/ill-treatment committed by either party, whether the husband or wife, also has a bearing on Dr. AbuSulayman's thesis. Whilst dealing with the translation we noticed that the word *nushūz* which has one specific meaning in this context is often translated differently with reference to women and men. For women for instance, it is commonly rendered as the more censorious "disobedience/rebellion," as opposed to the much softer rendering for men as "alienation," "desertion," "aversion," and "antipathy." Muhammad Asad makes the following interesting observation on verse 4:34 concerning this verb:

> The term *nushūz* (lit., "rebellion" – here rendered as "ill-will") comprises every kind of deliberate bad behaviour of a wife towards her husband or of a husband towards his wife, including what is nowadays described as "mental cruelty"; with reference to the husband, it also denotes "ill-treatment", in the physical sense, of his wife (cf. verse 128 of this *sūrah*). In this context, a wife's ill-will implies a deliberate, persistent breach of her marital obligations. (Muhammad Asad, *The Message of The Qur'ān* (Gibraltar: Dar al-Andalus, 1980), p.109, fn.44).

In sum therefore, we need to be constantly aware of cultural practices and biases having a bearing on the interpretation, and or translation, of verses of the Qur'an.

Dr. AbuSulayman's paper is an excellent example of an informed approach and methodology to the understanding and interpretation of a difficult verse of the Qur'an, making use of the tools of *maqāṣid* to derive a conclusion based on maintaining respect,

dignity and well-being, underscored by an understanding of the higher purposes of Islamic Law.

Since few works in the English language have been available on the subject of *Maqāṣid al-Sharīʿah*, the IIIT decided to fill the vacuum by initiating the publication and translation of a series of books on *al-maqāṣid* to introduce this important area of thought to English readers. These include to date, *Ibn Ashur Treatise on Maqāṣid al-Sharīʿah*, *Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* by Ahmad al-Raysuni, *Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Sharīʿah a Functional Approach* by Gamal Eldin Attia, and *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* by Jasser Auda.

As the topic is complex and intellectually challenging, with most books appearing on the subject written mainly for specialists, scholars and intellectuals alone, the IIIT London Office is also producing other simple introductory guides to the subject as part of its Occasional Papers series with a view to providing easy accessible material for the general reader. These include *Maqāṣid al-Sharīʿah Made Simple* by Muhammad Hashim Kamali, *The Islamic Vision of Development in the Light of Maqāṣid al-Sharīʿah* by Muhammad Umer Chapra, and *Maqāṣid al-Sharīʿah: A Beginner's Guide* by Jasser Auda.

ANAS S. AL SHAIKH-ALI
SHIRAZ KHAN
October, 2008

FOREWORD TO 1ST EDITION

THE FAMILY in Islam is meant to be an abode of peace and tranquility. The Qur'an speaks of living with each other on a footing of kindness, of mutual consultation between husband and wife, and of the love and mercy God has put in our hearts. Being a Revelation intended for all kinds of situations, as well as all eras, the Qur'an addresses not only good relations between husbands and wives, but also those times when the atmosphere is strained. With a view to keeping the family intact whenever possible, and always stressing that people act kindly toward one another, even during times of marital discord, the Qur'an suggests different strategies for the husband and wife to follow when either spouse is recalcitrant. One of the verses that addresses husbands, 4:34 (in which a procedure is given for a husband to follow when dealing with an unruly wife) has achieved a certain notoriety in the West, as well as in some Muslim circles, for its supposed licensing of husbands to beat their wives.

Many non-Muslims in the West, as well as many Muslims around the world, sadly, understand this verse to condone the kind of wife abuse that is meant by the term "domestic violence," where one spouse will physically or verbally abuse the other. In *Marital Discord: Recapturing the Full Islamic Spirit of Human Dignity*,* the distinguished scholar Dr. AbuSulayman intends to put at rest this misunderstanding of the Qur'an. This work is a re-reading of this important verse, based on the perspective of the Islamic value of human dignity.

From his research on childhood, Dr. AbuSulayman has learned that it is in the crucible of the family that we develop our moral

*Title of the original edition, [editors].

character. It is his conviction that the revitalization of the Ummah, from its current state of depression and discord, to one of optimism and unity, will occur only when Muslim families are indeed places of "repose, affection, and compassion." Clearly the issue of husband-wife relations is decisive in this endeavor.

Dr. AbuSulayman's methodology is to examine the nature of the problem, investigate the context and reach an objective understanding based on the purposes of the Divine Revelation and the Sunnah of the Prophet Muhammad. He looks at the issue of marital discord with a deep sensitivity to women's perspective, an attitude that is quite refreshing and, indeed, frequently missing in works on women written by men.

I am honored to write the Foreword to Dr. AbuSulayman's work which addresses a crucial issue. There are many different ways of reading the Qur'an, from misogynistic to emancipatory. This work moves the debate forward by introducing an alternative interpretation of the Qur'anic text. His explanation is fresh and firmly on the side of women's human rights.

Not all Muslims will agree with Dr. AbuSulayman's conclusions. Nevertheless, as Dr. AbuSulayman points out, even according to the traditional account, the Qur'an does not condone domestic violence. Therefore, no one can dispute Dr. AbuSulayman's call for husbands and wives to deal with marital discord in a compassionate manner. No one can deny his laudable goal for an Islamic family based on the Qur'anic values of human dignity, compassion, tolerance, and on the sanctity and dignity of human life.

I was completely engrossed in Dr. AbuSulayman's text, as I am sure other readers will also be. I recommend this work to any one who wishes to study the Qur'an's teachings on husband-wife relations in Islam.

KATHERINE BULLOCK

MARITAL DISCORD

Recapturing Human Dignity Through the Higher Objectives of Islamic Law

THE DECLINE OF THE UMMAH compared to the spectacular achievements of the developed world, the widespread attacks on its cultural and intellectual foundation and existence, the deep deterioration of human rights among Muslim nations, as well as the much publicized plight of Muslim women, comprise a series of formidable challenges which advocates of both Islam and human rights are working hard to overcome.

An important and delicate issue in regard to the latter is the complex and difficult question of the "chastisement" of women, conventionally understood to mean a method by which a husband can exercise his prerogative to resolve marital problems resulting from the 'recalcitrance and disobedience' of wives, in order to overcome the disaffection and alienation felt by both spouses within a failing marriage. In practice however the issue of 'chastisement' has been subject to much misunderstanding and abuse by men, oblivious to the issue of women's rights, and in particular Islam's position regarding the status and treatment of women. As such, advocates of human rights within Islam continue to work hard toward a perspective and resolution that removes all forms of oppression against women, and defuses any possibility of treating them unjustly in the name of religion.

Throughout history, and across cultures, women have always tended to suffer from being amongst the more vulnerable members of society, and parallel to their social and economic position, there have always existed, and continue to do so, several important

factors which have threatened their rights and status, leaving them more open to control by men. These include their relative physical weakness, their emotional as well as physical attachment to their children, and the poverty, illiteracy, and lack of development in which they often find themselves. Taken together these affect women disproportionately, and because of this and the numerous human rights abuses they commonly suffer in many cultures and regions, it is critical that we study the subject of "chastisement" honestly and deeply, with a view to understanding the higher objectives and purposes of the Creator (*maqāṣid al-Shāri'*).

I have always been aware of the various complexities which have surrounded the issue of "chastisement" and shaped its general understanding. For me personally, of particular significance is its relevance to modern discourse, the underlying reasons governing its use, as well as wider implications for the well being and structure of the family. This awareness and interest has in turn partly been due to my experiences as a youth, my deep faith, and a mindset convinced of the veracity of critical thought. Earlier in my career as a graduate student in the USA, an advocate for positive social change, and an educator, I used to occasionally come across various challenges leveled at Islam, controversies or rather 'problems' to which, with certain intellectual and methodological reasoning, I was always able to find a sufficiently rational and persuasive answer. This was largely the result of a strongly held conviction (since childhood) that the Message revealed from the Creator to the Prophet Muhammad is the Truth and an undisputed guidance for all mankind. It developed within me a vision that gave prominence to a rational and methodological approach to thought, which over the years has held me in good stead. Thus often when assailed not so much by doubts but by problems, intricate or otherwise, I have always been able to resolve them, both soundly and intelligently, undaunted by their apparent validity of reasoning.

Objective thinking is characterized by clarity, patience, and persistence in pursuing problems that require research, vision, and reasoning. Obviously, there is a clear distinction between doubts

and problems. Doubts provoke obstruction, frustration, as well as discouragement, whereas problems inspire motivation, action and diligence.[1] In the case of Islam for instance, I always approach any dispute concerning it as a puzzle to be solved rather than a source for misgivings. It presents an opportunity to utilize authentic Islamic epistemology, which comprehensively integrates the reading of the Revelation with the reading of the universe (the real existential), using the principles of reasoning to grasp its significance, and to also realize its higher intents, objectives and purposes (*maqāṣid al-sharī'ah*). When confronted by a problem, my approach thus is first to examine its nature, to identify its background, isolate influential factors, to locate it in time and space, and to consider the overall state of affairs, circumstances, contexts, norms, and positions governing both it and its nuances of debate. In relation to Islam if one begins by studying the texts, one is more likely to be tradition-bound. In the Muslim world there exists a culture governed by blind adherence to, and fear of, discussing what have come to be known as the "sacred zones," and this attitude coupled with ignorance of social sciences, has come to cloud a comprehensive vision and understanding of things. Nevertheless, this approach has never hindered my own pursuit of thoughtful perception and has never produced anything less than a conviction that does not betray the high standards and rational principles of the Shari'ah and human dignity.[2]

In sum, it is with these factors in mind and after a lengthy and busy period of life and career, that I have come to address the subject of the "chastisement" of women. It is undoubtedly an issue of critical import, requiring close and careful scrutiny as well as comprehensive review within an Islamic context, cognizant of the realities of contemporary society.

Before delving into the issue I would like to focus a little on the importance of childhood education, and the need for a stable family structure. There is no doubt that Muslims have suffered, and continue to suffer, a long and steady decline not only in their socio-economic-political life, but also disastrously in their educational

systems. Attempts to reverse this have largely failed. Lately, I have tried to research reasons for the failure of Islamic revivalism, despite numerous consecutive attempts over the past millennium since Imam Abū Ḥāmid al-Ghazālī (d. 505AH/1111 AD) called for reform in his monumental works: *Iḥyā' ʿUlūm al-Dīn* (The Revival of the Sciences of Religion) and *Tahāfut al-Falāsifah* (The Decline of Philosophers). Therefore, I have particularly focussed research on the subject of childhood in Islamic thought and its contribution to civilization, because it has been an area neglected in academic studies though forming an integral basis for change in the reconstruction of the spiritual and epistemic aspects of the Islamic identity. Such a reconstruction is essential if the Ummah is to be on a level with the challenges that it encounters.

This focus on childhood has furthermore led me to emphasize the role of the family as the most important environment that critically shapes the identity of children and develops their morals and character. Thus, the family can be a medium through which reconstruction can take place. This process relies on the innate motives of parents who seek only what is best for their children, according to their understanding and convictions. Of course, today we cannot attempt to propose an independent or secluded environment in which educators can prepare and train a new, free, and courageous generation able to replace the previous enslaved and mentally defeated one. A historical example is the experience of Moses who led his people out of Egypt, after which they spent forty years in the wilderness. This time witnessed the birth of a new generation, free, brave and courageous, replacing those who had developed a slave mentality and attitude under Pharaonic tyranny. The attitude and mentality of the new generation is addressed in the Qur'an:

> But those who believed that they were to be convened before their Lord, said: "How many a small group has overcome a mighty host by the will of God! And Allah is with the perseverant." And when they advanced to encounter Goliath and his forces, they invoked; "Our Lord! Pour forth on us patience and make us victorious over

> the disbelievers." So they routed them by Allah's leave and David killed Goliath, and Allah granted him dominion and conferred wisdom upon him, and edified him with that which He willed. And if Allah did not check one set of people by means of another, the earth would indeed be full of mischief. But Allah is full of bounty to all creatures. (2:249–251)

Emphasis on the educational role of the family necessarily leads one to research and review the family structure, in addition to all the relationships and dimensions which shape its role in relation to the growth and spiritual, psychological, and moral development of children and their epistemic constituents and experiences. Consequently, I have found myself confronted with the issue of the "chastisement" of women and its repurcussions on not only husband-wife relations (and others involved in the issue) but also on family life, in general.

METHODOLOGY: A MAQĀSIDĪ APPROACH

As mentioned earlier, in approaching this subject I have followed a comprehensive method of research involving examination of the various aspects, circumstances, and factors concerning the issue of "chastisement," as well as its overall dimensions. I have also used *maqāṣid* as a 'fundamental methodology' for debate and analysis. Finally, I have committed the work to a methodological discipline in which all related issues are located in their correct context, without allowing bias to dominate the whole or the circumstantial which would otherwise invalidate an established principle or a general objective (*maqṣad*). It is important to pursue with sound reasoning the epistemic integration between the verses and guidance of the Glorious Revelation and the patterns of the universe and the examples of human experience in time and space. Accordingly, it is necessary to begin tackling this subject from deep-rooted Islamic principles of human dignity, liberty, and responsibility, the human being's status as the chosen *khalīfah* (vicegerent) of God, and the legitimate right of self-determination.

Clearly, any system of human relations inconsistent with such basic principles does not represent the Islamic spirit, objectives, or purposes, and should be scrutinized to diagnose the flaws which contradict essential human rights and responsibilities. Moreover, no system should be allowed to breach the foundation of the family relationship in Islam, which is, by and large built upon the concept of "repose, affection and compassion." Any anomalous systems that militate against these concepts should be scanned to discover their flaws.

As a general methodological point of view, it is agreed that the message of Islam ultimately provides guidance and direction in the best interests of, and for the ultimate destination of humankind throughout time and space. When seeking to achieve the purposes of that message, temporal and spatial factors and conditions play an important role and should be recognized and taken into account in the application of Islamic doctrine on the micro level. These factors and conditions always need to be addressed and identified when we study different systems in the Sunnah (tradition of the Prophet), and the cumulative and voluminous legacy of Islamic jurisprudence. We should be aware of the peculiarity of such systems that aim to guide and organize a certain community at a specific time and in a specific place with a particular set of situations, traditions, customs, and resources. Without a true perception of such conditions and appreciation of the significance of their particular systems, and by ignoring a *maqāṣidī* based approach focusing on the higher objectives and intents of Islamic law, we are very likely to draw a flawed conclusion based on wrong abstractions and extensions, or imitate certain approaches that belong to different times and places.

The graduation of obligations and prohibitions in the Qur'an, the adaptability of the message to suit different situations, times, and places, and the plurality of approaches in Islamic jurisprudence, all provide evidence that socio-juridical dimensions are deeply rooted in the Islamic tradition and experience. Following this principle, the founders and scholars of juridical schools of thought differ in their juridical opinions (*fatāwā*) and decrees (*aḥkām*)

regarding family matters, owing to differences in customs, traditions, and resources. These variations might exist in the same period but within two different environments. For instance, the Madinah-based Mālikī *madhhab* (school of jurisprudence), which was centered in Arabia with its tribal traditions and clannish sensitivities, differs from the Iraq-based Ḥanafī *madhhab*, that was centered in Mesopotamia, the cradle of ancient civilizations that engraved their cultures on social relations and resources, and created a more developed individualism. Such cultural and social differences are reflected in the choices of each *madhhab* regarding the conditions and terms of the marriage contract and its prerequisites such as qualifications and guardianship.

Furthermore, variations in juridical opinions and decrees due to time and place exist not only from one *madhhab* to another, but also within the same *madhhab*. Imam Muḥammad ibn Idrīs al-Shāfi'ī (d. 204 AH), a great jurist and the founder of a leading *madhhab* in Iraq, made major changes in his jurisprudential decisions when he left Iraq and resettled in Egypt, owing to the social and cultural differences prevailing there. Yet again, the perception and interpretation of some Qur'anic verses may vary from time to time and from place to place, depending on the extent of human knowledge enabling scholars to grasp a new meaning that was neither known nor thought of before acquiring such knowledge. This is, in turn, additional evidence for the divinity, inimitability, and miraculous character of the Glorious Revelation, whose guidance transcends time and place.[3] The Qur'an stresses: "We will show them Our signs in the universe, and in their own selves, until it becomes manifest that this [Revelation] is the Truth. Is it not sufficient in regard to your Lord that He is a Witness over all things?" (41:53)

In relation to the above are the various scientific discoveries revealing the miracles of the Qur'an, its phenomenal accuracy and subtlety of representation, which are capable of providing guidance and exemplifying the facts of the universe, without contravening the realities of creation or the norms that have gradually

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come to light with the expansion of human cognition throughout various temporal and spatial changes.

Thus, owing to significant changes reflecting various aspects of life and society, we are mistaken in limiting the scope of review to historical interpretations when we examine family legislation or any legislative matters. Certainly, this should not be interpreted to mean that heritage, juridical experience or the historical records of legislation, systems and applications should be discarded. On the contrary, this study aims to consider carefully that rich legacy and scrutinize it within its historical and social context so as to extract the quintessence of that experience, to learn the relevant lessons, and to re-identify the objectives and purposes sought by the Revelation. The Ummah is currently characterized by a great lack of vitality, initiative, and dignity, having submitted to despotism, ignorance, and the demise of a defiant and positive spirit. Thus to diagnose objectively the state of affairs, emerging situations, and potential opportunities of the Ummah, we have to carry out a critical review of this reality.

CHASTISEMENT

As we approach the issue of the "chastisement" of women and the injury, pain, and disgrace that this entails, we need to bear in mind that suffering, fear, and anxiety result in hate, isolation, and apathy. Meanwhile, love, respect, and trust result in charity, dedication, and enthusiasm. For a long time, the Ummah has been enduring severe suppression and humiliation, and a culture of despotism and patronage. In many societies, such tyranny is no longer a monopoly of the state police or security apparatus. In fact, these abuses have become a part of the common culture, and occur amongst different classes of society, in particular, between the "strong" and the "weak." The implications of this situation are important since it is contrary to the Islamic spirit of kinship and solidarity, which depicts the Muslims, as mentioned in the Sunnah traditions, as "one structure whose parts support one another"[4] and furthermore

sets "the example of believers in their mutual sympathy and compassion as one body that collectively cares for any ailing organ until it recovers."[5] The Sunnah provides many examples of this and by doing so sets the foundations of such a united spirit:

> Each Muslim is a brother of his fellow Muslim and should not oppress, disdain or abandon him; it is sufficient evil for a Muslim to demean his brother [in faith]; a Muslim is his whole sanctuary, property and character.
>
> God does not bestow mercy on someone who does not show mercy to others.
>
> God but bestows mercy on His merciful servants.
>
> A believer can never be a slanderer, a blasphemer, or an obscene or vulgar person.
>
> The most faithful among the believers are the ones with the best morals and the best of you are the best for their wives.

Bearing this in mind and more specifically in relation to wives, the Sunnah traditions report that the Messenger strongly rebuked a husband who beat his wife: "One of you continues to beat his wife as a slave and is not ashamed to keep cuddling her."[6] He also said "so many women who come to Muhammad's family bemoan [the abuse by] their husbands, and those are not the best of you."[7] The Prophet himself set the highest example of kindness, compassion, dignity, and benevolence: "He never extended his hand to hurt a woman, or a servant or anyone else..."[8]

Thus in light of these general premises, we should examine the issue of "chastisement" carefully, and its place in familial, marital, and paternal relations, so as to identify the real notion of what "chastisement" actually means, and the authentic Islamic familial organization that sustains the structure of the Muslim family, particularly in the contemporary world. Such a system needs to achieve a relationship based on "repose, affection and compassion"

so as to create a strong and solid family that provides a safe, spiritual, emotional, and psychological environment where the Muslim child can grow up strong, honest, and competent, responsive to the challenges of time and space.

The issue of "chastisement" is therefore closely linked to the structures of the family and human relations and receives particular attention because it is mentioned in the Qur'an and because its historical and traditional interpretations were purported by most people to denote a physical act such as slapping, hitting, beating, striking, punching, etc. This would definitely produce a strong sense of pain and humiliation, regardless of the extent of the physical suffering itself. Furthermore, the instrument of the action was seen to vary; according to some *fatāwā*, it could consist of a few strokes with a *siwāk* (a light twig used to clean the teeth) to something similar, such as a "toothbrush" or "pencil" as interpreted by ʿAbd Allah ibn ʿAbbās in responding to an enquiry regarding the interpretation of the "mild chastisement," according to a narrative related by ʿAṭāʾ ibn ʿAbbās. Such a "chastisement" was therefore seen more in the way of a reproach or an expression of discontent and annoyance, rather than an expression of humiliation and pain. On the other hand, we find that some *fatāwā* employed an extreme definition of "chastisement" as that which "must not exceed forty strokes," and, in addition, with "no retribution between the man and his wife..."[9]

Let us now examine the Qur'anic verse referring to the issue of "chastisement" which reads as follows:

> Men are the protectors and maintainers of women,[10] because God has given the one more than the other, and because of the sustenance they provide from their own means. And the righteous women are the truly devout ones, who guard the intimacy which God has [ordained to be] guarded. And as for those women whose ill-will you have reason to fear, caution them [first]; then leave them alone in bed; then chastise [*idribuhunna*] them; and if thereupon they pay you heed, do not seek to harm them. Behold, God is indeed Most High, Great! If you fear a rift between the two of them, appoint two

arbiters: one from his family and another from hers; if they wish for peace, God will bring about their reconciliation: for God has full knowledge, and is [thoroughly] acquainted with all things. (4:34–35)

Firstly, to understand this verse correctly, it is necessary to place it in the general framework of family structure and relations in Islam, so as to grasp its true implications within the higher aims, objectives and purposes of the Revelation. Secondly the verse must be interpreted in the light of other related Qur'anic verses:

O mankind! Reverence your Guardian-Lord, Who created you from a single person, created [of a similar nature] his mate, and from the two of them scattered countless men and women; reverence God through Whom you demand [your mutual rights], and reverence the wombs [that bore and delivered you]: for God ever watches over you. (4:1)

And among His signs is that He created for you mates from among yourselves, that you may dwell in repose with them, and He has rendered affection and compassion between you: verily in that are signs for those who ponder. (30:21)

When you divorce women, and they fulfill the term of their *'iddah* [waiting period] either take them back on equitable terms or release them on equitable terms; but do not take them back to injure them, or to take undue advantage; if anyone does that, he wrongs his own soul. Do not take God's signs as mockery, but solemnly celebrate God's bounties to you, and that He sent down to you the Book [of Revelation] and Wisdom [of the Messenger] for your instruction, and fear God, and know that God is All Knowledgeable and [thoroughly] acquainted with all things. (2:231)

O you who attain to faith! When you marry believing women, and then divorce them before you have touched them [in a due intercourse], they owe you no *'iddah* that you have to count in respect of them; so give them a present, and release them in a dignified manner. (33:49)

> The divorce is [permissible only] twice, after that the parties should either hold together on equitable terms or separate with dignity. It is unlawful for you [men] to take back any of your gifts [from your wives], save when both parties fear that they would be unable to maintain the limits ordained by God [for example, to treat each other fairly]. If you [judges] do indeed fear that they would be unable to maintain the limits ordained by God, there is no blame on either of them if she gives up something in return for her release. These are the limits ordained by God; so do not breach them. If any do breach the limits ordained by God, such persons wrong [themselves as well as others]. (2:229)

If we read the above verses in the light of the collective injunctions of the Shari'ah and the overall Prophetic ideals and traditions, we find that the real spirit of the marital relationship is shaped by the sentiments of "affection" and "compassion" and the obligations of "patronage," so that the governing factors in such a relationship are "affection, compassion, and benevolence."

We come thereby to realize the real reason for and meaning of "chastisement," its implied consequences of humiliation and pain, and the position of this issue in regards to marital relations in Islam, especially the ideal of a system designed to promote mutual respect and love between spouses and to solve their problems. The conclusions are highly significant considering the reality of social relations in contemporary Muslim societies, where sadly women are often exposed to mental and physical cruelty as well as oppression. Indeed the perpetrators of such practices attempt to find justifications in the misreading of certain antiquated *fatāwā* granting the husband, as the head of the family, an extensive mandate in family matters. Such a perception of family relations ignores the established foundations of this institution that is, compassion, solidarity, cooperation, and integration. If we are to avoid women and the family being deemed to be the mere property of men, the meaning of such texts must not be misinterpreted, taken out of context, or exploited.

Typical living conditions in the past restricted the capacity and role of women to the family spheres, burdened men with extra obligations, and delegated extra powers to them in managing their family matters, especially in the cities. Muscular capability was the major means of earning a living and keeping the family secure. However, housekeeping and family needs exhausted the woman's energy and time. It is likely that such restrictions would have limited women's sophistication, curtailed their interests, weakened their perception, isolated them from the world beyond their family realms, and imbued them with a particularly naïve mentality. Although society then did not question man's excessive authority in the family structure, the situation of today's world differs substantially in its means, capabilities, as well as opportunities. Today's educational, technological, cultural, and global perspectives offer women better productivity, the opportunity of economic independence, and an intellectual and technical capability that transcends the small sphere of the family matters of yesterday. Thus, the historical portrait of the family, with its structural limitations of the past, seems unable to exemplify the aspirations of the family members or to represent their roles and potentials today. In order to avoid tensions and conflicts in family relations and to re-establish the concepts and the values that enable each member of the family to pursue her/his prospective roles, whilst complementing the roles of other members, we have to re-examine our own perception of the family structure within the context of today's reality.

Whilst examining the issue of "chastisement" more deeply, I could see that the kernal of the debate, and a foreseeable inherent problem, lay in the interpretation of the Arabic root verb *daraba* (to chastise) in the Qur'an as to imply "suffering," "humiliation," and physical "pain," as a means to force the wife to acquiesce to her husband's will, or to coerce her into obedience and loyalty, regardless of the extent of the pain and suffering she may thus undergo. The underlying assumption governing this situation stipulates that the Muslim wife, as in certain religions and cultures, has no means of exit from the marriage, no matter what the circumstances, and

can never obtain a dignified release, or an equitable divorce, without her husband's consent. Accordingly, the reasoning goes, she should be subjugated or compelled to tolerate her husband's acrimonious behavior and to comply with his dictates. If this were the case, chastisement as "suffering," "humiliation," and physical "pain," would seem to be an effective means to resolve, or rather to subdue, marital problems!

However, we have established that the above representation does not subscribe to the principles of the Shari'ah which base the family structure on "affection" and "compassion," support its cohesion, and maintain its identity. Thus, family membership in Islam is by choice: coercion, repression or abuse is not tolerated, and each spouse has the right to leave the family and terminate the marital bond, especially when it becomes harmful. At least, separation is less detrimental to family members than a relationship based on hate, discord, and acrimony. In these circumstances, the Shari'ah grants the husband the right to seek *ṭalāq* (divorce) and grants the wife the right to seek *khul'* (disengagement or release). In the latter case, the wife has the choice of being released from the marriage contract by agreeing to return the dowry that she received from her husband in the contract or part of it (as a limit), so that the husband's greed for her personal wealth or that of her family does not provide an excuse for abuse or result in the disintegration of the family.[11]

Hence, compulsion or physical "chastisement" can never be a means of maintaining the spirit of affection between spouses, or to promote intimacy and trust between them. Besides, the study of the steps put forward in the relevant Qur'anic verses (4:34–35) will reveal two routes to a remedy which aim to resolve marital problems and to seek reconciliation, especially when the wife shows a tendency to rebellion and unjust rejection of the marital bond.

The first step is to resolve disputes between spouses without the intervention or mediation of a third party. This step is to be initiated and pursued by the husband and should proceed through three stages: (1) to caution; (2) to refuse to share the marital bed; and (3) to eventually "chastise."

Second, when such efforts fail to bring about peace and reconciliation, both spouses should seek arbiters from their respective families to help them heal the rift, to advise them, and to prescribe remedies for the various problems afflicting them, in accordance with the following verse:

> If you fear a rift between the two of them, appoint two arbiters: one from his family and another from hers; if they wish for peace, God will bring about their reconciliation: for God has full knowledge, and is [thoroughly] acquainted with all things. (4:35)

All in all, the Qur'anic recommendations seek to effect reconciliation and to make peace between spouses, based on the right facts, using positive initiatives, and in an effective manner. So when the wife shows signs of disaffection and defiance, the Qur'an ordains the husband to counsel, plead and perhaps remonstrance with her. This will give him ample opportunity to communicate his concerns, to clarify differences, to explore possible solutions, to demonstrate his keen interest in maintaining their marriage on equitable terms, and eventually to make clear the potentially unpleasant outcome of divorce. Therefore, to resolve any marital discord, the initial effort emphasizes dialog, exchange, and advice during which time the wife must not fall into the trap of complacency feeling that issues can remain as they are because at the end of the day her sexual appeal and/or the husband's affection or desire for her will prevail. Thus communication and dialog are the first steps which should be undertaken toward resolving any marital discord, rather than the wife resorting to her feminine appeal and the sexual needs of her husband. Yet, if she does not heed such counsel out of ignorance or arrogance, it is then deemed necessary for the husband to proceed further along this route, that is, to take a different action, rather than merely to counsel or remonstrance with her. At this point, he should "refuse to share the marital bed," which will confirm that she cannot count on his weakness, impatience, or desire for her. Taking note of his lack of interest in her, she will intuitively realize the gravity of the situation and the

seriousness of the consequences. This will, in turn, offer her a window of opportunity to rethink the whole situation, to realize that she has reached a crossroads, and to work to help find a way out of the discord so as to re-establish the state of "affection" and "compassion" between both spouses. On the other hand, if the wife stubbornly maintains her position of rejection despite the above attempts at a remedy by the husband, then there should be no doubt that the marriage is in jeopardy, and the threat of disintegration looming on the horizon; as such both parties should realize the seriousness of the situation and take positive action immediately.

At this critical point, the inevitable question arises: what can be done to make spouses who have reached such a precarious stage appreciate the real danger to their marriage, namely the threat of divorce, and to stop the rift passing into the private realm of mediation or arbitration by a third party such as members of their respective families?

It is at this critical juncture, that the next step to resolve the dispute, before seeking the intervention of arbiters, can be taken and that is to "chastise" (Arabic root verb: *daraba*) as in the above-cited verse (4:34). The cornerstone of my study and for me the heart of the matter lies in the interpretation of the verb *daraba*, particularly in the context of seeking reconciliation between estranged spouses, after the husband has attempted to restore peace and accord verbally, by cautioning the wife, and physically by refusing to share the marital bed, thereby expressing his displeasure.

Is *darb* here construed to mean to slap, to hit, to flog, to strike, or any other related manner of physical castigation (which inflicts suffering, pain, and disgrace) to force a woman to maintain marital ties against her own will? If this is true, what is the purpose of this subjugation? Does subjugation of women by means of pain and disgrace help to reinstate affection and fidelity, or succeed in protecting the family structure from collapse and disintegration? Can this measure subdue wives, who are well versed in their rights and force them to stay oppressed by abusive husbands, or condone

such a hostile and violent relationship? Or will they resort to what they are entitled to in Islam, to exit by a dignified release (*khul'*)? And if this is the case, can there be any room for repression or subjugation in the marital relationship, which is far more likely to undermine the family structure and to expedite its collapse?

THE VERB *DARABA*

If it can be shown that the verb *ḍaraba* does not denote the infliction of physical or psychological pain, and that this Qur'anic idiom might be misunderstood by some husbands to justify their cruelty towards their wives, who are, in turn, obliged to endure such abuses owing to their concern for their children, or their social or financial insecurity, how, then, should this "idiom" be construed?[12]

This matter should be examined comprehensively and with true knowledge of its various dimensions and connotations without jumping to quick conclusions. The Qur'anic steps that deal with the idiom *ḍaraba/ḍarb* are focused on how to reconcile spouses in a way that promotes affection, compassion, and intimacy, restoring the objective of marriage. These steps do not yet seek the last resort: the arbitration by referees from the spouses' families. Therefore, if the purpose and steps of the Qur'an do not allow any excuse for violence, injury or pain in resolving marital problems, what, then, is the true interpretation of this verb? Does it mean pain in the allegorical or metaphorical sense? For *ḍaraba* is used as a transitive verb in the Qur'an, for example "God *propounds* [to you] the parable..." (16:75 and 76), and as an intransitive verb, for example "when you *travel through* the earth ..."(4:101), where an auxiliary preposition is added to the verb.

If we are to accept the interpretation of this verb as a few gentle light strokes or taps with a *siwāk* or something similar, such as a "toothbrush" or a "pencil," as rendered by Ibn ʿAbbās, then this meaning does not include punishment, injury, or pain. Rather, it implies a gentle physical expression of gravity, frustration, or disinterest in the wife by a husband who no longer shares the

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marital bed. Such an expression is the opposite of touching or cuddling which implies warmth and intimacy. This interpretation is reasonable since it does not entail any damage to human dignity and due respect between spouses who are virtually bound by marital ties, of nuptial association. The above perception does not associate "chastisement" with disgrace, injury or pain. In contrast, the view of some other jurists, as shown in their *fatāwā*, does not necessarily follow this line of thinking, especially when they stipulate that *ḍarb* should "not exceed twenty or forty strokes," regardless of the extent and application of these strokes, that is, "whether they are applied to different parts of her body or not, injure organs or not, cause a bone fracture or not, and whether she will survive them or not!"[13]

However, in spite of the moderate interpretation of Ibn ʿAbbās, it still provides a loophole for misunderstanding which has been manipulated in the past to justify abusive and violent conduct, and can still be exploited today to inflict pain on women under the auspices of the fatwa of gentle strokes. Therefore, both the perception and resolution should leave no chance of misreading the real concept of *ḍaraba* and should allow no misconduct nor abuse of that concept. Such precautions certainly fit the true purposes of the Shariʿah in establishing the family on the basis of affection, compassion, and dignity.

As a result, I have committed myself to reevaluating the whole question in terms of its methodological framework, (presented earlier in this study), regarding the eternity of the Revelation and the Message, the necessity to grasp the relevant Divine norms, the peculiarity of time and space, and the imperative of an objective and disciplined analysis of the matter under consideration. I have, therefore, endeavored to examine the different connotations of the verb *ḍaraba* and its various derivations in the Qur'an, since it is a sound approach to use the Qur'an to interpret the Qur'an. The best exegesis of the Glorious Qur'an can be produced by the Revelation itself and fine-tuned by the higher objectives and intents (*maqāṣid*) of the Shariʿah.

The compilation of the various connotations of *ḍaraba* and its derivatives in the Qur'an produces approximately seventeen distinct nuances as shown in the following verses:

God *propounds* [to you] the parable... (16:75, 76, 112; 66:11)

When [Jesus] the son of Mary is *held up as an example*, behold, your people raise a clamor thereat [in ridicule]! (43:57)

See what *similes they strike* for thee: but they have gone astray, and never can they find a way. (17:48)

Do not invent *similitudes* for God: for God knows, and you know not. (16:74)

When you *travel through* the earth ... (4:101)

Then We *covered* their ears, for a number of years, in the Cave, [so that they did not hear]. (18:11)

Shall We then *take away* the Revelation from you and repel [you], because you are a people transgressing beyond bounds? (43:5)

... they should *draw their veils* over their bosoms ... and that they should not *strike their feet* so as to draw attention to their hidden ornaments ... (24:31)

... Travel by night with My servants, and *strike a dry [solid] path* for them ... (20:77)

Then We told Moses: *Strike the sea with your staff*. So it divided and each separate part resembled the huge firm mass of a mountain. (26:63)

God does not disdain to *use the similitude* of things, lowest as well as highest ... (2:26)

And remember Moses prayed for water for his people; We said: "*Strike the rock with your staff*." Then there gushed forth from it twelve springs ... (2:60)

... they *were covered with* humiliation and misery; they drew on themselves the wrath of God ... (2:61)

Disgrace *covers them* [like a tent] ... (3:112)

But how [will it be] when the angels take their souls at death, and *smite* their faces and their backs? (47:27)

... I will instill terror into the hearts of the unbelievers: you *smite* above their necks and *smite* all their finger-tips off them. (8:12)

And take in your hand a raceme [bunch][14] of soft leaves and *stroke* therewith: and break not your oath ... (38:44)

Therefore, when you encounter the unbelievers [in hostility] *smite* their necks; at length, when you have thoroughly subdued them, bind a bond firmly on them ... (47:4)

O you who attain to faith! When you *go abroad* in the cause of God, investigate carefully ... (4:94)

... So a wall *shall be erected* between them, with a gate therein. Within it will be mercy throughout, and outside it, all alongside, will be [wrath] and punishment! (57:13)

Then did he turn upon them [idols] *striking* them with the right hand. (37:93)

If we examine the above verses, we note that the root verb (idiom) *ḍaraba* (transitive and intransitive) has several figurative or allegorical connotations. It can mean to isolate, to separate, to depart, to distance, to exclude, to move away, etc. When something is subjected to such action, that means it is to be extracted, distinguished, and presented as a clear example. The verb *ḍaraba*:

- in regard to the land denotes to *travel* or to *depart*
- in regard to the ear, it means to *block* it or *prevent* it from hearing

- in regard to the Qur'an, it means to *neglect*, *ignore* and to *abandon* it
- in regard to truth and falsehood it means to make either of them *evident* and to *distinguish* one from the other
- in regard to the veil it means the *drawing* of the head-covering over the bosoms
- in regard to seas or rivers it means to *strike a path* through the water pushing it aside
- in regard to erecting a wall it means to *partition* or *separate*
- in regard to people it means to be *overshadowed* by ignominy
- in regard to the feet, necks, faces, backs, it means to *cut*, to *slash*, and to *strike*
- whereas, in the rest of the verses, it means to *impel*, to *shock*, to *slap*, or to *damage*

Thus, the general connotations of the root verb *ḍaraba* in the Qur'anic parlance mean to separate, to distance, to depart, to abandon, and so forth.[15]

SEPARATION AND SECLUSION

What, then, should be the appropriate interpretation of this verb *ḍaraba* when it is applied to the resolution of marital problems and the restoration of love and harmony between estranged spouses?

> ... And as for those women whose ill-will you have reason to fear, caution them [first]; then leave them alone in bed; then chastise [*iḍribuhunna*] them; and if thereupon they pay you heed, do not seek to harm them. Behold, God is indeed Most High, Great! (4:34)

Considering the context, the purpose of this verse is reconciliation in a dignified manner and without coercion or intimidation as each spouse has the ability and the right to dissolve the relationship.

Therefore, the meaning of *ḍarb* cannot imply the infliction of injury, pain, or disgrace. The most straightforward interpretation is hence that of departure, separation or seclusion. This arrangement, where the estranged husband deserts his wife altogether for some time, helps to bring the situation to a possible resolution because it is the final step beyond cautioning her and refusing to share her bed. Now, whilst the husband is away, the wife has ample opportunity to rethink the whole situation, to ponder the eventual consequences, and to realize the inevitable outcome of rejection, namely, divorce. At this point she must carefully decide if she would prefer to be separated permanently from her husband or be returned to the marital state. It is the moment of truth and if she is the party in the wrong, she has the choice to see reason and win back her estranged husband before it is too late.

Therefore, *ḍarb* in the context of improving a difficult marital relationship and restoring harmony, should be construed as to "leave" the marital home, to "move away" or "separate" from the wife. This is the last resort which is to be taken before seeking the mediation of arbiters from the respective families of each spouse. If this attempt, in turn, does not manage to heal the rupture and restore peace, then both parties should face the eventual choice: "...the parties should either hold together on equitable terms or separate with dignity" (2:229).

The above analysis of the verb *ḍaraba* is consistent and in tune with the Prophetic tradition and actual practice of the Prophet, as attested in the narrative which related that the Prophet moved away from his wives when they rebelled after their demands for a better standard of living were denied. The Prophet retired to a place in the house known as *al-mashrabah* for a month and offered them the choice to accept the standard of living he could afford, and so to stay together, or to be released from the marriage contract and separate with dignity. This incident is addressed in the Qur'an:

> O Prophet! Declare to your consorts: "if it be that you desire the worldly life and its dazzle, then come! I will provide for your delight

and release you in a handsome manner. But if you seek God and His Messenger, and the Home of the hereafter, verily God has set up for the doers of good amongst you a great reward." (33:28–29)

Throughout this experience, the Prophet never inflicted injury, pain or insult on any of them. Therefore, when the consorts of the Prophet realized the seriousness of the situation, sensed the wrath of their own families, and missed his relationship and intimacy, that was enough to inspire them to be content with the lifestyle that the Prophet offered.[16]

The Prophet spent one month in seclusion before advising their families of the matter and before giving them the choice of compliance or separation. Only then did they recognize their error, and, having found themselves on the threshold of divorce, returned to the dignity of acceptance. As a result, the interpretation of *ḍaraba* in the actual practice of the Prophet was to seclude, to move away, and to distance himself from them. That is consistent, on the one hand, with the psychological nature of the matter, and on the other, with the common understanding of the various Qur'anic usages of the root verb *ḍaraba* and its abstractions, derivatives, and figuratives. Also, this perception does not contradict the exegesis of Ibn ʿAbbās because he cautions husbands that their expression of anger should not exceed a few light touches with a *siwāk*, or the like. Evidently, this very gentle expression would probably be adequate to express the husband's discontent. Yet, it is not clear how such light touches, as interpreted by Ibn ʿAbbās, in this latter stage of marital discord, would be sufficient to convey the true gravity of the deadlock and its consequences, without going a decisive step further by refusing to share the marital bed, in order to reach reconciliation or seek separation!

CONCLUSION

In conclusion, according to the Qur'anic recommendations to restore the marital relationship after the eruption of ill-will and

conflict, I have proposed that the true reading of the Qur'anic idiom *daraba* directs the husband to "move away" from the wife, to "distance" himself from the wife and to "depart" from the marital home as a last attempt to restore her to reason and help her realize the gravity of recalcitrance and its potential consequences for her and their children. The connotations of departure and seclusion are more readily acceptable and more compatible with the Qur'anic parlance than the association of physical injury, psychological pain, and disgrace. The latter does not result in a dignified marital relationship, or promote human dignity, nor does it create "affection" and "compassion," which are the foundations of a lasting marriage, especially in the light of the values, prospects, and views of the present era. The analysis outlined in this paper is well supported by the actual practice of the Prophet. It is an effective emotional remedy that accomplishes the purposes and objectives of Islam in establishing the family structure on a basis of affection, and compassion, and maintains the family as a wholesome environment that nourishes the children spiritually, morally, emotionally, and intellectually.

Obviously, many of our Ummah's present notions are inadequate and erroneous. This is caused by a history of conflicts between its factions as well as the influence of some non-Islamic cultures and philosophies which cloud the Ummah's present vision. Moreover, the understanding of Revelation and its objectives and application as they relate to everyday life is affected by prevailing human knowledge in accordance with the time and place in which it is set. It is necessary, therefore, for the scholars of our time to pursue wisely and relentlessly their critical investigation of such issues liberating the Ummah's notions and realizing the Shari'ah's intents. Finally, the conclusions that I have drawn in this paper and also in others dealing with similar issues are within the framework of ijtihad using a holistic approach to Islamic law. I hope that such will always be the attitude and approach of students and scholars of Islam.

NOTES

[1] AbuSulayman, AbdulHamid A., *"Ẓāhiriyyah Ibn Ḥazm wa I'jāz al-Risālah al-Muḥammadiyyah,"* (The Prima Facie Textualism of Ibn Ḥazm and the Inimitability of the Muḥammadan Message), *al-Tajdid*, International Islamic University, Malaysia, vol.2, no.3 (February 1998).

[2] See, e.g., AbuSulayman, AbdulHamid A., *Toward an Islamic Theory of International Relations: New Directions for Methodology and Thought* (Herndon, VA: The International Institute of Islamic Thought, 2nd Revised Edition, 1993).

[3] Taking this into consideration I have offered an interpretation of the verse "O Messenger! Incite the believers to the fight..." see *Toward an Islamic Theory*, pp.69–75.

[4] *Mawsū'ah al-Sunnah*, "Bukhārī," vol.3, no.2585, (Tunisia, Tunis: Dār al-Saḥnūn and Dār al-Da'wah, 1992), p.1999.

[5] Ibid. vol.3, no.2587, p.1999.

[6] Ibid, vol.6, p.153.

[7] Ibid, "Abū Dawūd," vol.8, no.2146, p.608.

[8] Ibid, "Muslim," vol.2, no.2328, p.1814.

[9] For the interpretation of "... then chastise [*idribuhunna*] them; and if thereupon they pay you heed, do not seek to harm them" (4:34), see al-Ṭabarī, Abū Ja'far Muḥammad ibn Jarīr (d. 310 AH), *Jami' al-Bayān fī Tafsīr al-Qur'ān* (The Exegesis of Qur'an by al-Ṭabarī), (Beirut: Dār Lubnān), 4, no.5, pp.40–44; Al-Qummī al-Nisābūrī, Muḥammad ibn Ḥusayn, *Tafsīr Gharā'ib al-Qur'ān wa Raghā'ib al-Furqān* (The Exegesis of the Qur'anic Prodigies and Oddities) provided in the footnotes of al-Ṭabarī.

10 "A man as protector" means for man to take the responsibility of supporting and providing for his wife, *Tahthīb Lisān al-ʿArab*, Ibn Manẓūr. "The maintainer of his household" is the one in charge of household affairs, *Mukhtār al-Ṣiḥāh*. "Protector/carer" (*qayyim*) is the one in charge, *Al-Muʿjam al-Wasīṭ*. *Qawwām* (pl., *qawwāmīn*) is the one who is able to execute, *Al-Munjid fī al-Lughah wa al-Aʿlām*, 1997. If *qawāmah* means to support, care, and provide for the family and be in charge of it, then it is important to recognize that when the man (husband) does so, he is performing an important duty. This is necessary for the well-being of the family, which in turn also helps the woman (as a mother) to dedicate herself and raise her children properly. This may be an important reason why the Creator gave "the man" the ability to work relentlessly and entrusted him with the leadership of the family. Therefore, the family's affairs and responsibilities have been arranged and divided between the husband and wife in a way that ensures the man's loyalty to his family (wife and children). The only alternative to this would be the destruction of the family institution, which would result in the suffering of the mother (wife) and child financially and emotionally and, in particular, greatly damage the children's sense of human dignity. Instances of this can be recognized in societies where the family has been shattered, and single-parent families are a common phenomenon.

Needless to say, it is not appropriate to transfer automatically the roles of the male and female assigned to them within the family institution to other spheres such as other institutions in which roles are assigned based on the individuals' abilities, skills, and qualification, regardless of gender. However, it is equally important to understand that when the woman (mother) assumes other responsibilities, in addition to her responsibility as a mother, such responsibilities should not undermine her role as a mother, a role for which she is innately predisposed and the lack of which has a serious effect on the human race.

11 Noteworthy of consideration is the Qur'anic verse of *khul'* (disengage): "... there is no blame on either of them if she gives up something in return for her release..." (2:229), does not specify the value of such a reimbursement. However, the Prophetic traditions impose a limit so that it does not exceed the value of the dowry that she has received from her husband against the marriage: "would you return his garden to him [her husband]?," but nothing more. Allowing any additional value may motivate a husband, greedy for his wife's wealth, to mistreat her so as to impel her into seeking escape from her misery in return for her or her family's wealth. Such a loophole could cause the family to collapse or disintegrate. Therefore, it has to be permanently closed.

12 In his interpretation of the *qawāmah* (guardianship), Ibn Kathīr narrated on the authority of al-Hasan al-Baṣrī, that the reason for the revelation of this verse

was that "... a woman came to the Prophet complaining that her husband had slapped her on the face; the Prophet said: 'Retaliation.' Then Allah revealed: 'Men are protectors and maintainers of women,' so she did not retaliate." In another narration, the Prophet said: "We desired one thing but Allah wanted another, and that which Allah wants is best." This hadith, though, is thought to be unauthentic; for it could not be found in any of the acceptable Hadith references. Even if it were, it does not legitimize slapping. It simply means that in the case of physical cruelty or slapping between spouses, retaliation should not be the remedy, for such a remedy could further complicate the matter and be a definite route to divorce. The Prophet was very clear in opposing any kind of physical measures. Where life becomes unbearable for the spouses and before physical cruelty amounts to criminal acts, it is better for them and their children to separate or get divorced on good terms. The interests and well-being of all parties, especially the children, should be preserved.

[13] Al-Ṭabarī, al-Nīsābūrī, ibid.,4, no.5, pp.40–44. Unlike al-Ṭabarī, where the phrase "harmless physical measures" appeared in the context of conflict and ill-will between spouses, it occurred in the context of adultery, metaphorically referring to it as "admitting into your bed one whom you dislike." This is indeed an issue that affects dignity and marital trust and usually destroys the core of the marital relationship. It is an issue that is hard and painful for spouses and family members to make public. In this case the destructive ramifications extend to the external families of the two parties and beyond. Thus judicial sociologists need to study this issue thoroughly and make recommendations to aid the parties concerned, including the authorities, in dealing with such a sensitive matter.

It is also important to note that "harmless striking" occurred in the hadiths of the Prophet's farewell pilgrimage. To understand what the Prophet really meant, it is imperative to examine those narrations in the light of the relevant Qur'anic teachings, to highlight any contradictions that might have been a result of the misunderstanding by the hadiths' narrators.

This should always be considered when dealing with documentation of verbal narratives, especially when there is evidence that the text of the original hadith has been mixed with the narrator's explanatory phrases. A clear example of this is Imam Aḥmad's narration (*Musnad*, hadith no.19774), which includes words and phrases that seem to be of an explanatory nature or for the purpose of relating the hadith to Qur'anic expressions that came to the mind of the narrator of the hadith. An instance of this is the occurrence of "and if you fear their ill-will." It is strange that such phrases and words would occur in a public address by Prophet Muhammad, whereas they are not found in other narrations of the hadith. Despite this, one must note that this narration, like other narrations of this hadith, talks about "admitting into your bed one

whom you dislike," while it does not follow the Qur'anic steps of dealing with conflict and ill-will that are mentioned in the *qawāmah* verse (namely: advice, refraining from sexual contact, and physical punishment). Those narrations deal with adultery (referred to in other narrations as *fāḥishah-mubayyinah*), an issue that has a specific punishment, while Imam Aḥmad's narration, however, refers to it (adultery) metaphorically as "admitting into your bed one whom you dislike." In addition, it talks only about the punishment dimension, "beating," the nature of which is discussed and specified as "harmless beating," for the purpose of discipline, not revenge.

14 In fact, the literal Qur'anic expression is *dighth*, which is construed as a raceme of numerous soft palm leaves. God who bestows grace and sanctity upon humankind, clearly instructs His prophet Ayūb, whose wife annoyed him while he was enduring a prolonged and severe ailment and adversity, to make good of his oath to chastise her with a hundred strokes by touching her with a raceme of a hundred palm leaves, as a figurative manifestation of his vow, without inflicting any injury, pain, or disgrace on her.

15 It is remarkable that the Qur'anic text does not use the idiom *daraba* to denote physical or corporal punishment; rather, it uses the idiom *jalada* (to lash, to whip, to flog, etc.), as in the verse which reads: "The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes; let not compassion move you in their case, in a matter prescribed by God, if you believe in God and the last day; and let a party of the believers witness their punishment" (24:2).

16 For full details of this incident in the Sunnah, see, for instance: *Ṣaḥīḥ al-Bukhārī*, no.5395; *Ṣaḥīḥ Muslim*, no.2704; *Sunan al-Tirmidhī*, no.3240; *Musnad al-Imam Aḥmad*, no.24588.

The Qur'an speaks of living with each other on a footing of love, kindness, mercy and mutual consultation between husband and wife. It also addresses those times when the atmosphere is strained. This paper examines the issue of marital discord with a deep sensitivity to the perspective of women and the need for family harmony. Criticising an approach to the Qur'an that is misogynistic rather than emancipatory the paper moves the debate forward by introducing an alternative interpretation of the Qur'anic text dealing with the issue of marital discord and using an approach based on the higher objectives, purposes, and intents of Islamic Law (*Maqāṣid al-Sharī'ah*). The explanation is fresh, firmly on the side of women's human rights and recaptures the full Islamic spirit of human dignity.

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